

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Lafayette City-Parish Consolidated Government of)	
Lafayette, Louisiana, d/b/a Lafayette Utilities)	
System,)	
Complainant,)	
)	
v.)	File No. CSR-8357-P
)	
CableOne, Inc.; Wide Open West; Comporium)	
Communications; NewWave Communications;)	
Atlantic Broadband; Suddenlink; Avenue Bb)	
Communications; GCI, Inc.; Charter)	
Communications; Armstrong Cable Services;)	
Wave Division Holdings; NPG Cable, Inc.; Eagle)	
Communications; and Cox Communications,)	
)	
Defendants.)	

ORDER

Adopted: July 19, 2011

Released: July 19, 2011

By the Chief, Media Bureau:

I. INTRODUCTION

1. On June 8, 2010, Lafayette City-Parish Consolidated Government of Lafayette, Louisiana, d/b/a Lafayette Utilities System (“LUS”) filed a complaint with the Commission against the National Cable Television Cooperative, Inc. (“NCTC”) and fifteen individual companies (“Company Defendants”) (collectively, “Defendants”).¹ On July 1, 2011, in their Joint Status Report on discovery, the parties requested that the Commission enter a protective order in the above-captioned proceeding.² For the reasons set forth below, we adopt the Protective Order, provided in Appendix A to this Order, to ensure that certain highly confidential and competitively sensitive documents and information that may be submitted by the parties are afforded adequate protection.³

¹ See LUS, Complaint for Violations of Section 628 of the Communications Act and 47 C.F.R. § 76.1001 *et seq.*, File No. CSR-8357-P (filed June 8, 2010) (the “Complaint”).

² See Issue I Discovery Status Report, File No. CSR-8357-P (filed July 1, 2011) (“Joint Status Report”).

³ As the parties suggest, and to the extent necessary, we will consider the issue of whether the membership decision at issue in this proceeding was “unfair” after discovery and supplemental briefing as to Issue I have concluded. See Company Defendants’ Request for Clarification, File No. CSR-8357-P, at 3-6 (filed July 8, 2011) (“Company Defendants’ Request for Clarification”); Lafayette Utilities System’s Response to the Defendants’ Request for Clarification, File No. CSR-8357-P, at 2-3 (filed July 13, 2011) (“LUS Response to Defendants’ Clarification Request”).

II. BACKGROUND

2. On May 25, 2011, the Media Bureau issued an order dismissing two Defendants from the above-captioned proceeding.⁴ The Media Bureau also set forth a schedule by which LUS and the remaining Company Defendants could elect to engage in discovery on the issue of whether the remaining Company Defendants may be held responsible for the actions that allegedly violated Section 628(b) of the Communications Act of 1934, as amended, and the Commission's implementing rule ("Issue I").⁵ On June 6, 2011, LUS and the Company Defendants filed discovery requests.⁶ On June 16, 2011, LUS and the Company Defendants filed oppositions to the discovery requests.⁷ NCTC also filed an opposition, by which it objected to all requests by LUS for third-party discovery from NCTC, and also made specific objections to LUS' requested discovery.⁸ On June 21, 2011, LUS and the Company Defendants filed replies to the oppositions.⁹

3. On July 1, 2011, the parties submitted their Joint Status Report regarding discovery.¹⁰ The parties indicated that they had reached agreement as to several issues related to discovery, and based on those understandings, "LUS has no objections to the discovery requests served by Company Defendants."¹¹ Although LUS and the remaining Company Defendants continued to disagree as to whether NCTC and its former employees are subject to third-party discovery, NCTC agreed to voluntarily submit to such discovery, as evidenced by a stipulation attached to the Joint Status Report.¹² The stipulation also contained general parameters for discovery, and agreed-upon modifications to the LUS discovery requests.¹³

4. The parties indicated in the Joint Status Report that they disagreed as to how to define the proper scope of Issue I, and that additional clarification would be needed from the Commission.¹⁴ They

⁴ See *LUS v. NCTC et al.*, Order, 26 FCC Rcd 7690 (MB, 2011). The Defendants that the Media Bureau dismissed were NCTC and Utilities Service Alliance, Inc.

⁵ See *id.*

⁶ See Lafayette Utilities System's Request for Production of Documents and Interrogatories, File No. CSR-8357-P (filed June 6, 2011); Company Defendants' Requests for Discovery, File No. CSR-8357-P (filed June 6, 2011) ("Company Defendants' Discovery Requests").

⁷ See Lafayette Utilities System's Objections to the Cable Company Defendants' Requests for Discovery, File No. CSR-8357-P (filed June 16, 2011); Opposition of the Company Defendants to Lafayette Utilities System's Discovery Requests, File No. CSR-8357-P (filed June 16, 2011).

⁸ See Opposition of the National Cable Television Cooperative to Lafayette Utilities System's Discovery Requests, File No. CSR-8357-P (filed June 16, 2011).

⁹ See Lafayette Utilities System's Reply to Discovery Objections of Cable Company Defendants and NCTC, File No. CSR-8357-P (filed June 21, 2011) ("LUS Discovery Reply"); Reply of the Company Defendants to Lafayette Utilities System's Objections to Requests for Discovery, File No. CSR-8357-P (filed June 21, 2011). LUS argued, among other things, that while the Commission has sufficient authority to require NCTC to provide requested discovery, the Commission should "refer the matter to an administrative law judge and thereby remove any question about its authority to require NCTC to provide third-party discovery to LUS." See LUS Discovery Reply at 9, 14-15.

¹⁰ See Joint Status Report.

¹¹ See *id.* at 2.

¹² See *id.* at 2-3, Exhibit 2. In light of NCTC's agreement to submit to discovery, we need not address at this time the issue of whether NCTC and its employees are subject to discovery as third parties. We also dismiss as moot LUS' request to refer this issue to an administrative law judge.

¹³ See *id.* at Exhibit 2.

¹⁴ See *id.* at 3; see also *id.* at Exhibit 2 ("The parties agree that all discovery will be limited to matters falling within the scope of Issue I referenced in the FCC Media Bureau Order dated May 25, 2011, but the parties disagree as to such scope, and thus agree to obtain clarification from the FCC prior to commencement of discovery.").

agreed to a schedule by which each party would make a filing on the issue by July 8, 2011, with replies due July 13, 2011.¹⁵ Once the Media Bureau issued an order providing the requested clarification, the parties agreed that “the document production from NCTC and LUS and all responses to interrogatories will be completed no later than 30 days thereafter,” and that “supplemental briefs to address matters falling within Issue I will be due 30 days after completion of discovery, with replies due 20 days thereafter.”¹⁶

5. In their filings on July 8, the parties indicated that they had agreed that they no longer need the Commission to provide clarification on the scope of Issue I at this time.¹⁷ Company Defendants also requested in their July 8 filing that the Media Bureau consider further exploration of whether the membership decision at issue in this proceeding was “unfair.”¹⁸ Specifically, Company Defendants proposed that “*after* completion of the Issue I discovery and the filing of the supplemental briefs, if the Bureau concludes that LUS has succeeded in demonstrating that one or more Company Defendants ‘may be held responsible’ for the refusal to grant LUS’ application for membership in NCTC, then LUS could attempt to show that such conduct was ‘unfair’ within the meaning of Section 628(b). The Bureau could decide at that time whether further discovery might be useful on this issue”¹⁹ In its July 13 filing, LUS “generally agree[d] with the Defendants’ proposed approach to addressing the unfairness issue.”²⁰ According to LUS, if after discovery and briefing of Issue I, the Commission decides that the remaining Company Defendants may be held responsible for NCTC’s denial of LUS’ membership application, then the parties have agreed upon a schedule by which to engage in discovery as to whether the membership denial was an unfair act under Section 628(b).²¹

6. In the Joint Status Report, the parties indicated their agreement “that all discovery shall be subject to the entry by the Commission of a mutually-agreeable protective order”²² The proposed protective order is similar to protective orders entered by the Media Bureau in prior proceedings.²³ The discovery requested in this proceeding seems likely to result in the production of certain highly confidential and sensitive business information.²⁴ LUS indicated that the parties agreed that “[d]iscovery

¹⁵ See *id.* at 3.

¹⁶ See *id.*

¹⁷ See Lafayette Utilities System’s Submission on the Proper Scope of Discovery under Issue I, File No. CSR-8357-P, at 2 (filed July 8, 2011) (“the parties agreed in a conference call this morning that clarification of Issue I is not necessary at this time. Rather, LUS, the Defendants, and NCTC will proceed with discovery in the manner set forth in the Stipulation, and if they disagree on the legal consequences of the facts disclosed in the discovery, they will argue their respective positions in post-discovery briefing.”); Company Defendants’ Request for Clarification at 3 (“In light of the fact that the Parties have entered into a mutually acceptable stipulation to modify LUS’ discovery requests from their original formulation, Company Defendants have concluded that the need for immediate clarification as to the evidence necessary for LUS to show ‘vicarious liability’ on the part of Company Defendants has become less urgent. Although it is essential that this vicarious liability question ultimately be answered, the Parties can offer a full legal analysis supporting their respective views on this issue in the post-discovery Issue I supplemental briefs and reply briefs”).

¹⁸ See Company Defendants’ Request for Clarification at 3-6.

¹⁹ See *id.* at 6.

²⁰ See LUS Response to Defendants’ Clarification Request at 2.

²¹ See *id.*

²² See Joint Status Report at 2.

²³ See, e.g., *DISH Network, L.L.C. v. Madison Square Garden, Inc., Madison Square Garden, L.P., and Cablevision Systems Corp.*, Order, 25 FCC Rcd 15227 (MB, 2010); *Verizon Telephone Companies and Verizon Services Corp. v. Madison Square Garden, L.P. and Cablevision Systems Corp.*, Order, 25 FCC Rcd 3888 (MB, 2010).

²⁴ See Company Defendants’ Discovery Requests; Joint Status Report at Exhibit 2 (containing LUS’ modified discovery requests).

will commence on July 18, but production of highly confidential information will not occur until the Commission has approved the parties' proposed Protective Order"²⁵

III. DISCUSSION

7. We conclude that enhanced confidential treatment is justified for the documents and information at issue in this proceeding. As stated in the proposed Protective Order, additional protection is needed "to facilitate and expedite the review of documents filed in this proceeding or obtained from a person in the course of discovery that contain trade secrets and privileged or confidential commercial or financial information."²⁶ Such information may be competitively sensitive and additional protection is warranted so that such information is closely guarded and not made available publicly. Accordingly, we adopt the Protective Order set forth in Appendix A. Any party seeking access to highly confidential documents subject to this Protective Order shall request access pursuant to the terms of the Protective Order and must sign the Declaration provided as Attachment A to this Protective Order.

8. The attached Protective Order reflects the parties' desire, given the highly confidential nature of the information at issue, to preclude employees of LUS, the cable operator Company Defendants, or NCTC from access to such information. This is consistent with past Commission action involving protective orders relating to highly confidential information. Nevertheless, we do not intend by this Order to prejudge this issue. If either party believes that it is necessary for purposes of effectively adjudicating this proceeding that specific employees be granted access to the highly confidential information subject to the Protective Order, it may file a motion to amend the Protective Order. At a minimum, such motion should include: (i) the title, name, and job description for each employee for which access to the highly confidential information is sought; (ii) the reason why that employee's access to the highly confidential information is necessary to the effective adjudication of this proceeding; and (iii) why experts and consultants outside of that party's employ cannot perform the same function. In no event will access be granted to employees in a position to use the highly confidential information for competitive commercial or business purposes.

9. In addition to Paragraph 4 of the attached Protective Order, we clarify that a party filing documents with the Commission that contain Highly Confidential Information ("Highly Confidential Filing") must file one copy of the Highly Confidential Filing and, where feasible, two copies of the Highly Confidential Filing in redacted form ("Redacted Highly Confidential Filing"). A Highly Confidential Filing must be accompanied by a cover letter stating: **"CONTAINS PRIVILEGED AND HIGHLY CONFIDENTIAL INFORMATION – DO NOT RELEASE – SUBJECT TO PROTECTIVE ORDER IN LAFAYETTE CITY-PARISH CONSOLIDATED GOVERNMENT OF LAFAYETTE, LOUISIANA, D/B/A LAFAYETTE UTILITIES SYSTEM v. CABLE ONE, INC., ET AL., FILE NO. CSR-8357-P,"** and each page of this document containing Highly Confidential Information shall be stamped with the same statement. Redacted Highly Confidential Filings must also be accompanied by a cover letter stating: **"REDACTED – FOR PUBLIC INSPECTION,"** and the cover letter should also state that the Submitting Party is filing an unredacted version of the same documents.

IV. ORDERING CLAUSES

10. Accordingly, we **ADOPT AND ISSUE** the Protective Order attached at APPENDIX A pursuant to Sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and (j), Sections 0.457(d) and 76.1003(k) of the Commission's rules, 47 C.F.R. §§ 0.457(d) and

²⁵ LUS Response to Defendants' Clarification Request at 2.

²⁶ See Joint Status Report at Exhibit 1.

76.1003(k), and Section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and such Protective Order is effective upon its adoption.

11. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.²⁷

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief, Media Bureau

²⁷ 47 C.F.R. §0.283.

APPENDIX A

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Communications; GCI, Inc.; Charter)	
Communications; Armstrong Cable Services;)	
Wave Division Holdings; NPG Cable, Inc.; Eagle)	
Communications; and Cox Communications,)	
)	
Defendants.)	

PROTECTIVE ORDER

1. This Protective Order is intended to facilitate and expedite the review of documents filed in this proceeding or obtained from a person in the course of discovery that contain trade secrets and privileged or confidential commercial or financial information. It establishes the manner in which “Highly Confidential Information,” as that term is defined herein, is to be treated. The Order is not intended to constitute a resolution of the merits concerning whether any Highly Confidential Information would be released publicly by the Commission upon a proper request under the Freedom of Information Act (“FOIA”) or other applicable law or regulation, including 47 C.F.R. § 0.442. The Protective Order Parties (as defined below) intend for this Protective Order to apply at least through the resolution of Issue I, as stated in the Media Bureau Order in this proceeding dated May 25, 2011, and remain open to discussion of any proposed modifications to this Protective Order that may be appropriate if this matter proceeds beyond Issue I.

2. Definitions.

a. Commission. “Commission” means the Federal Communications Commission or any arm of the Commission acting pursuant to delegated authority.

b. Highly Confidential Information. “Highly Confidential Information” means (i) operational, financial, revenue, and other sensitive business information; (ii) program carriage agreements, the terms thereof, or negotiations related to same, or any part thereof; (iii) other information submitted to the Commission by the Submitting Party that has been so designated by the Submitting Party and which the Submitting Party has determined in good faith constitutes trade secrets or commercial or financial information which is privileged or confidential within the meaning of Exemption 4 of the

Freedom of Information Act, 5 U.S.C. § 552(b)(4); and (iv) information submitted to the Commission by the Submitting Party that has been so designated by the Submitting Party and which the Submitting Party has determined in good faith falls within the terms of Commission orders designating the items for treatment as Highly Confidential Information. Highly Confidential Information includes additional copies of, notes, and information derived from Highly Confidential Information.

c. Declaration. “Declaration” means Attachment A to this Protective Order.

d. Outside Counsel. “Outside Counsel” means the firm(s) of attorneys, or sole practitioner(s), as the case may be, along with their employees (such as attorneys, secretaries, support staff, and paralegals), representing either complainant Lafayette City-Parish Consolidated Government of Lafayette, Louisiana, d/b/a Lafayette Utilities System (“LUS”), defendants Cable One, Inc.; Wide Open West FINANCE, LLC (named in Complaint as Wide Open West); DBA Comporium (named in Complaint as Comporium Communications); NewWave Communications; Atlantic Broadband Finance, LLC (named in Complaint as Atlantic Broadband); Cequel Communications, LLC, DBA Suddenlink Communications (named in Complaint as Suddenlink); Avenue Broadband Communications, INC. (named in Complaint as Avenue Bb Communications); GCI Communications Corp. (named in Complaint as GCI, Inc.); Charter Communications, Inc.; Armstrong Utilities, Inc. (named in Complaint as Armstrong Cable Services); Wave Division Holdings, L.L.C.; NPG Cable, Inc.; Eagle Communications, Inc. and Cox Communications, Inc. (collectively, the “Defendants”) or third party the National Cable Television Cooperative Inc. (collectively, the “Protective Order Parties”). Outside Counsel shall also include any outside consultants or experts retained for the purpose of assisting Outside Counsel in this proceeding, provided that such outside consultants or experts are not employees of the Protective Order Parties (as relevant) and are not involved in the analysis underlying the business decisions of any competitor of the Submitting Party and do not participate directly in those business decisions. For the avoidance of doubt, Outside Counsel shall exclude any current or former employee of any of the Protective Order Parties.

e. Party. “Party” means Complainant LUS or any of the Defendants.

f. Reviewing Party. “Reviewing Party” means an Outside Counsel, as defined in Paragraph 2.d. of this Protective Order, who has executed the attached Declaration.

g. Submitting Party. “Submitting Party” means a person or entity that seeks confidential treatment of Highly Confidential Information pursuant to this Protective Order.

3. Claim of Confidentiality. The Submitting Party may designate information as “Highly Confidential Information” consistent with the definition of that term in Paragraph 2.b of this Protective Order. The Commission may, *sua sponte* or upon petition, pursuant to 47 C.F.R. §§ 0.459 and 0.461, determine that all or part of the information claimed as “Highly Confidential Information” is not entitled to such treatment.

4. Procedures for Claiming Information is Highly Confidential. Highly Confidential Information submitted to the Commission shall bear on the front page in bold print, “**CONTAINS PRIVILEGED AND HIGHLY CONFIDENTIAL INFORMATION – DO NOT RELEASE – SUBJECT TO PROTECTIVE ORDER IN LAFAYETTE CITY-PARISH CONSOLIDATED GOVERNMENT OF LAFAYETTE, LOUISIANA, D/B/A LAFAYETTE UTILITIES SYSTEM v. CABLE ONE, INC., ET AL., FILE NO. CSR-8357-P.**” To the extent a document contains both Highly Confidential Information and non-confidential information, the Submitting Party shall designate the specific portions of the document claimed to contain Highly Confidential Information and shall, where feasible, also submit a redacted version not containing Highly Confidential Information. By

designating information as “Highly Confidential Information,” a Submitting Party signifies that it has determined in good faith that the information should be subject to protection under FOIA, the Commission’s implementing rules, and this Protective Order.

5. Storage of Highly Confidential Information at the Commission. The Secretary of the Commission or other Commission staff to whom Highly Confidential Information is submitted shall place the Highly Confidential Information in a non-public file. Highly Confidential Information shall be segregated in the files of the Commission, and shall be withheld from inspection by any person not bound by the terms of this Protective Order, unless such Highly Confidential Information is released from the restrictions of this Order either through agreement of the Protective Order Parties, or pursuant to the order of the Commission or a court having jurisdiction.

6. Commission Access to Highly Confidential Information. Highly Confidential Information shall be made available to the Commission and its staff. Consultants under contract to the Commission may obtain access to Highly Confidential Information only if they have signed, as part of their employment contract, a non-disclosure agreement the scope of which includes the Highly Confidential Information, or if they execute the attached Declaration.

7. Disclosure. A Reviewing Party may not disclose information designated Highly Confidential Information as to any other person or entity beyond those included in the definition of Reviewing Party in Paragraph 2.f. of this Protective Order. In addition, before Outside Counsel may obtain access to Highly Confidential Information, each Outside Counsel must execute the attached Declaration.

8. Procedures for Obtaining Access to Highly Confidential Information. In all cases where access to Highly Confidential Information is sought pursuant to Paragraph 7, before reviewing or having access to any Highly Confidential Information, each person seeking such access shall execute the Declaration in Attachment A and file it with the Commission and serve it upon the Submitting Party through their Outside Counsel, so that the Declaration is received by the Submitting Party at least five (5) business days prior to such person’s reviewing or having access to such Submitting Party’s Highly Confidential Information. Each Submitting Party shall have an opportunity to object to the disclosure of its Highly Confidential Information to any such persons. Any objection must be filed at the Commission and served on Outside Counsel representing, retaining, or employing such person as promptly as practicable after receipt of the relevant Declaration. Until any such objection is resolved by the Commission and, if appropriate, any court of competent jurisdiction prior to any disclosure, and unless such objection is resolved in favor of the person seeking access, persons subject to an objection from a Submitting Party shall not have access to Highly Confidential Information. If there is no objection or once such objection is resolved, the Submitting Party shall serve the documents of such party containing Highly Confidential Information on the requesting party’s Outside Counsel.

9. Copies of Highly Confidential Information. The Submitting Party shall provide an unredacted copy of the Highly Confidential Information to a Reviewing Party upon request. The original copy and all other copies of the Highly Confidential Information shall remain in the care and control of the Reviewing Party to whom it has been provided at all times. Reviewing Parties having custody of any Highly Confidential Information shall keep the documents properly and fully secured from access by unauthorized persons at all times.

10. Filing of Declaration. Outside Counsel shall provide to the Submitting Party and the Commission a copy of the attached Declaration for each Reviewing Party within five (5) business days after the attached Declaration is executed, or by any other deadline that may be prescribed by the Commission.

11. Use of Highly Confidential Information. Highly Confidential Information shall not be used by any person granted access under this Protective Order for any purpose other than for use in this proceeding (including any subsequent administrative or judicial review), shall not be used for competitive business purposes, and shall not be used or disclosed except in accordance with this Order. This shall not preclude the use of any material or information that is in the public domain or has been developed independently by any other person who has not had access to the Highly Confidential Information nor otherwise learned of its contents.

12. Pleadings Using Highly Confidential Information. Submitting Parties and Reviewing Parties may, in any pleadings that they file in this proceeding, reference the Highly Confidential Information, but only if they comply with the following procedures:

a. Any portions of the pleadings that contain or disclose Highly Confidential Information must be redacted from the remainder of the pleadings;

b. The unredacted versions containing or disclosing Highly Confidential Information must be covered by a separate letter referencing this Protective Order;

c. Each page of any Protective Order Party's filing that contains or discloses Highly Confidential Information subject to this Order must be clearly marked pursuant to Paragraph 4 of this Protective Order; and

d. The Highly Confidential portion(s) of the pleading, to the extent they are required to be served, shall be served upon the Secretary of the Commission and any Reviewing Party. Such Highly Confidential portions shall be served separately with a cover letter referencing this Order, and shall not be placed in the Commission's Public File unless the Commission directs otherwise (with notice to the Submitting Party and an opportunity to comment on such proposed disclosure). A Protective Order Party filing a pleading containing Highly Confidential Information shall also file a Redacted Public Version of the pleading containing no Highly Confidential Information, which copy shall be placed in the Commission's public files. A Protective Order Party may provide courtesy copies of pleadings containing Highly Confidential Information to Commission staff so long as the notations required by this Paragraph and Paragraph 4 are not removed.

13. Client Consultation. Nothing in this Protective Order shall prevent or otherwise restrict a Reviewing Party from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Highly Confidential Information; provided, however, that in rendering such advice and otherwise communicating with such client, a Reviewing Party shall not disclose Highly Confidential Information to their clients.

14. Violations of Protective Order. Should a Reviewing Party that has properly obtained access to Highly Confidential Information under this Protective Order violate any of its terms, it shall immediately convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure or use of Highly Confidential Information, the violating party shall take all necessary steps to remedy the improper disclosure or use. The violating party shall also immediately notify the Commission and the Submitting Party, in writing, of the identity of each party known or reasonably suspected to have obtained the Highly Confidential Information through any such disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of attorneys from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Highly

Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to the Submitting Party at law or equity against any party using Highly Confidential Information in a manner not authorized by this Protective Order

15. Termination of Proceeding. The provisions of this Protective Order shall not terminate at the conclusion of this proceeding. Within two weeks after final resolution of this proceeding (which includes any administrative or judicial appeals), each Reviewing Party shall destroy or return to the Submitting Party the relevant documents containing Highly Confidential Information as well as all copies and derivative materials made, and shall certify in a writing served on the Commission and the Submitting Party that no material whatsoever derived from such Highly Confidential Information has been retained by any person having access thereto, except that a Reviewing Party may retain, under the continuing strictures of this Protective Order, two copies of pleadings (one of which may be in electronic format) submitted on behalf of a Submitting Party. Any Highly Confidential Information contained in any copies of pleadings retained by a Reviewing Party to a Protective Order Party pursuant to this paragraph shall be protected from disclosure or use indefinitely in accordance with this Protective Order unless such Highly Confidential Information is released from the restrictions of this Protective Order either through agreement of the Protective Order Parties, or pursuant to the order of the Commission or a court having jurisdiction. The provisions of this paragraph regarding the retention of Highly Confidential Information, any documents containing such information, and copies of same, shall not be construed to apply to the Commission or its staff.

16. No Waiver of Confidentiality. Disclosure of Highly Confidential Information as provided herein shall not be deemed a waiver by the Submitting Party of any privilege or entitlement to confidential treatment of such Highly Confidential Information. Reviewing Parties, by viewing these materials: (a) agree not to assert any such waiver; (b) agree not to use information derived from any Highly Confidential Information to seek disclosure in any other proceeding; and (c) agree that accidental disclosure of Highly Confidential Information shall not be deemed a waiver of the privilege.

17. Subpoena by Courts, Departments, or Agencies. If a court or a federal or state department or agency issues a subpoena or orders production of Highly Confidential Information that a Reviewing Party has obtained under terms of this Protective Order, such Reviewing Party shall promptly notify in writing each Submitting Party of the pendency of such subpoena or order. Consistent with the independent authority of any court, department, or agency, such notification must be accomplished such that the Submitting Party has a full opportunity to oppose such production, which shall be at least five (5) business days prior to the production or disclosure of any Highly Confidential Information.

18. Additional Rights Preserved. The entry of this Protective Order is without prejudice to the rights of the Submitting Party to apply for additional or different protection where it is deemed necessary or to the rights of Reviewing Parties to request further or renewed disclosure of Highly Confidential Information.

19. Effect of Protective Order. This Protective Order constitutes an Order of the Commission and also a binding agreement between the Reviewing Party or other person executing the attached Declaration and the Submitting Party.

20. Authority. This Protective Order is issued pursuant to Sections 4(i) and 4(j) of the Communications Act as amended, 47 U.S.C. §§ 154(i), (j) and 47 C.F.R. §§ 0.457(d) and 76.1003(k), and Section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4).

Attachment A

In the Matter of)	
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v.)	File No. CSR-8357-P
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Communications; and Cox Communications,)	
)	
Defendants.)	

DECLARATION

I, _____, hereby declare under penalty of perjury that I have read the Protective Order that has been entered by the Commission in this proceeding, and I understand it. I agree to be bound by its terms pertaining to the treatment of Highly Confidential Information submitted by parties to this proceeding, and I agree that I shall not disclose or use Highly Confidential Information except as allowed by the Protective Order.

Without limiting the foregoing, to the extent that I have any employment, affiliation, or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or public interest organization), I acknowledge specifically that my access to any Highly Confidential Information obtained as a result of the Protective Order is due solely to my capacity as Outside Counsel as defined in Paragraph 2.d. of the foregoing Protective Order, and that I will not use such Highly Confidential Information in any other capacity; nor will I disclose such Highly Confidential Information except as specifically provided in the Protective Order.

I acknowledge that it is my obligation to ensure that: (1) Highly Confidential Information is used only as provided in the Protective Order; and (2) documents containing Highly Confidential Information are not duplicated except as specifically permitted by the terms of the Protective Order, and I certify that I have verified that there are in place procedures, at my firm or office, to prevent unauthorized disclosure of Highly Confidential Information.

I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission. I acknowledge that this Protective Order is also a binding agreement between the undersigned and the Submitting Party.

(signed) _____

(printed name) _____

(representing) _____

(title) _____

(employer) _____

(address) _____

(phone) _____

(email) _____

(date) _____